IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 249.

WYATT TEE WALKER, MARTIN LUTHER KING, JR., RALPH ABERNATHY, A. D. KING, J. W. HAYES, T. L. FISHER, F. L. SHUTTLESWORTH and J. T. PORTER,
Petitioners,

vs.

CITY OF BIRMINGHAM,
a Municipal Corporation of the State of Alabama,
Respondent.

OBJECTIONS TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF.

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AUTHORITIES CITED.

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Respondent, City of Birmingham, declined to consent to the filing of brief amicus curiae on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). We respectfully object to and oppose the motion for leave to file such brief.

We cannot fully develop our reasons for objecting to such motion within the limits of brevity required by Supreme Court Rule 42, which provides that when a motion to file brief amicus curiae is made "a party served with such motion may seasonably file an objection concisely stating the reasons for withholding consent". We under-

stand this to mean that only a very skeletonized presentation is permissible.

Briefly stated, these reasons include: (I) The delay to this point in the proceeding in seeking to file a brief amicus curiae should bar its filing; (II) The opinion and decision of this Honorable Court is based upon thorough consideration and careful determination of fundamental issues concerning respect for our courts and for law and order, not in a factual situation related to a labor controversy, but one involving the right of a municipality to protect its citizens in the use of its streets and sidewalks and from mob violence, but was rendered with an awareness of the cases involving organized labor, many of which were cited and discussed by the parties in lengthy briefs and argument and some by the Court in its opinion; and, lastly, (III) It poses no serious threat to the legal and constitutional rights of the organized labor movement, or any other group, either minority or majority.

I.

Respondent has declined consent to the filing of the amicus curiae brief at this stage of the case, coming after most thorough briefing[1] and lengthy oral argument of the

[1] Briefs filed with this Court and referred to in the letter of respondent declining to consent include:

1. Petitioners' Brief and Petition for Writ of Certiorari to the Supreme Court of Alabama, containing 45 pages and an Appendix of 35 additional pages.
2. Respondent's Brief in Opposition to Petition for Writ of Certiorari, containing 37 pages.
3. Brief for the Petitioners on the Merits, containing 81 pages, with a short Appendix of three additional pages.
4. Memorandum Brief for the United States as Amicus Curiae filed by the Solicitor-General, containing 25 pages.
5. Brief of Respondent in reply to the Petitioners' Brief and the Brief of the Solicitor-General, containing 74 pages, and an Appendix of eleven additional pages.
6. Petitioners' Reply Brief, containing four pages.
7. Respondent's Supplemental Brief, containing five pages.

issues involved and careful determination of them by this Honorable Court. Movant admits they have never before attempted to file an amicus curiae brief at such a late stage of the case. While we find nothing in the Supreme Court Rules either allowing or disallowing such a belated motion, the intent of Rule 58, imposing severe restrictions upon the right of a prevailing party to file a brief on application for rehearing, would logically justify a refusal to consider the motion of a stranger to the case to file a brief after the rendition of the Court's decision. We urge this be done.

II.

Movant admits the briefs by petitioners and by the Solicitor-General for the United States admirably cover the issues of freedom of speech and freedom of assembly. These issues are factually related to the denunciation by petitioners of courts in the South in general, and in particular their open defiance of the injunction by deliberately violating it without making any effort whatever to dissolve or modify it. Such issues are also related to the right of a municipality to protect petitioners and its citizens from the consequences of lawless commandeering of its streets and sidewalks in a situation involving an unruly, violent mob.

Underlying these important issues is the fundamental question of whether any group, minority or majority, is entitled to determine for itself what laws and court decrees it will choose to obey or what laws and court decrees it will flout and violate. An affirmative answer to this question may be considered by some as giving open encouragement to those who would riot, pillage, burn and murder. Or else it may well be like a seed that may be nurtured by one with malice in his heart, or even possibly by one who is well-meaning but misguided to grow

into such incidents as those experienced within the past year or two by Los Angeles, Chicago, Cleveland, New York and other cities, and more recently by Newark, New Jersey and surrounding cities.

These were the vitally important issues briefed by the parties to the case. These were the issues determined by the Court in its opinion and decision, which we earnestly urge is eminently correct.

The major premise upon which the request for consent and the motion for leave to file is based is the unfounded inference that this Honorable Court was unaware of or failed to consider in its opinion the labor movement and the cases and statutes spelling out its legitimate constitutional and statutory rights, and the incorrect notion that in so doing this Honorable Court fashioned an opinion that may be the vehicle through which the right of labor to organize may be destroyed and the destruction of its other constitutional and statutory rights may be facilitated.

As we shall later comment on in more detail, the Court's opinion is largely rested upon **Howat v. Kansas**, 258 U. S. 181, a labor injunction case. Other labor injunction cases cited by it include **In Re Green**, 369 U. S. 689, and **United States v. United Mine Workers**, 330 U. S. 258. A score or more labor cases are cited in one or more of the various briefs of the parties filed before decision, including the three last above mentioned and **Staub v. Boxley**, 355 U. S. 313. Reference to the table of cases shows that three of the four are cited by Movant.

III.

We do not find in such opinion and decision any threat, direct or indirect, to the legitimate interests of organ-

ized labor. Certainly, the right to organize and to lawfully strike and peacefully picket for legal causes are rights of organized labor that are no longer open to question. The decisions of this Honorable Court and the courts of the several states, including the State of Alabama, to say nothing of numerous federal and state statutes, within the last fifty years have firmly developed and established these rights.

It is interesting to note that the doctrine of **Howat v. Kansas**, 258 U. S. 181, a case involving a labor controversy, relied upon by the respondent herein and which is followed by this Honorable Court in its opinion, was decided some fifty years ago. It did not spell the doom of organized labor, then in its infancy, as a factor in the economic life of this country. To the contrary, it has grown in size and strength and power to the point that only recently Congress has been called upon by the President to enact emergency legislation to protect our country in its military and other vital interests from the frightening consequences of a nation-wide tieup of our transportation system.

Required brevity will not permit development of the point made in III. However, we do ask indulgence to be permitted to comment very briefly at least on some of the relevant Alabama cases typical of those throughout the Nation showing the development of legal concepts upholding the right of labor to organize, to strike, and to peacefully picket. In **Hardie-Tynes Mfg. Co. v. Cruse** (1914), 189 Ala. 66, 66 So. 657, 666, the Alabama Supreme Court recognized the constitutional rights of labor to organize and to strike, but denied them the right even peacefully to picket. These rights received legislative sanction in 1943 when the Bradford Act was enacted. **Acts of Alabama, 1943**, page 252; **Code of Alabama of 1940**, Title 26, Sections 376 et seq. Its constitutionality

was sustained in **Alabama State Federation of Labor v. McAdory** (1944), 246 Ala. 14, 18 So. 2d 810.

In **Hotel and Restaurant Employees v. Greenwood** (1947), 249 Ala. 265, 30 So. 2d 696, **cert den.** 322 U. S. 847, 68 S. Ct. 349, the right of employees to organize and to strike and peacefully picket to obtain a closed shop contract with the employer was recognized. A later case, **Alabama Cartage Co. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, etc.** (1948), 250 Ala. 372, 34 So. 2d 576, differs in that the latter case involved a "wild-cat" or unlawful strike in violation of the contract between the Union and the employer.

Two additional Alabama cases are worthy of mention because they upheld the right to engage in peaceful picketing upon the public sidewalks of the City of Birmingham.[2] **Sutter v. Amalgamated Assn. of Street, Railway and Motor Coach Employees of America (Local 1127 of Shreveport, Louisiana) et al.** (1949), 252 Ala. 463, 41 So. 2d 190, dealt with a situation where a bus terminal was picketed incident to a labor dispute between the Union employees and Southern Bus Lines, Inc. for a period of some two years. The other case is **Shiland et al. v. Retail Clerks, Local 1657** (1953), 259 Ala. 277, 66 So. 2d 146.

In the latter case, false allegations in the verified bill of complaint procured the issuance of an injunction by a

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[2] Over a period of many years the City of Birmingham has observed a policy of non-interference with peaceful picketing in labor disputes. Since 1963 it has by ordinance recognized the right to use public sidewalks to engage in demonstrating or picketing, when properly conducted, for any lawful purpose. In 1963 the City Commission was succeeded by the Mayor-Council form of government. Within a few weeks after it took office, the City Council adopted Ordinance 63-17, which in Section 7 thereof provides: "Those who participate in any demonstration on any sidewalk shall be spaced a distance of not less than ten feet apart; and not more than six persons shall demonstrate at any one time before the same place of business or public facility."

member of the Supreme Court of Alabama on March 23rd, and on May 1st thereafter the Circuit Judge dissolved the injunction. The Alabama Supreme Court affirmed on appeal.[3]

IV.

In conclusion, we respectfully submit that neither constitutional nor statutory rights of labor organizations, nor the many decisions delineating them, were overlooked by this Honorable Court in arriving at its decision in this case. It is unrealistic to criticize this gravely important and sound decision because of an imagined threat to the legitimate rights of organized labor. Past experience shows the groundless nature of such criticism. Moreover, the opinion is carefully constructed to uphold the dignity of our courts and respect for honestly rendered injunction decrees and to engender respect for law and order, recognizing the legitimate interest of state and local governments in regulating the use of their streets and public places in the preservation of law and order for the protection of petitioners as well as the general public. At the same time, state and local officers are clearly put on notice that this Honorable Court will not tolerate a contempt conviction "(w)here the injunction was transparently invalid or had only a frivolous pretense to validity." Nor will it apply the rule of **Howat v. Kansas** if, before disobeying the injunction, it is properly challenged in the state courts and in the process the challengers are "(m)et with delay or frustration of their constitutional claims." This safeguard stands as a bulwark to protect not only the constitutional rights of organized labor but any other group, minority or majority.

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[3] One of the writers of this objection was of counsel representing the respective Union in each of the four last above cited cases and our comments, because of his familiarity with them, extend slightly beyond what is shown in the printed opinions cited.

We respectfully request this Honorable Court to deny the motion for leave to file amicus curiae brief.

Respectfully submitted,

J. M. BRECKENRIDGE,

EARL McBEE,
Attorneys for Respondent.